

### REMARKS

In the Office Action dated June 2, 2006, claims 1-4, 9, 10, 12, 14-17, 20, 22, 24-26, and 28 were rejected under 35 U.S.C. § 103 over U.S. Patent No. 6,748,246 (Khullar) in view of U.S. Patent No. 7,006,477 (Balachandran); claims 5-8, 11, 18, 21, and 23 were rejected under § 103 over Khullar in view of Balachandran and U.S. Patent No. 6,848,008 (Sevanto); claim 13 was rejected under § 103 over Khullar in view of Balachandran and U.S. Patent No. 6,870,858 (Sebire); and claim 27 was rejected under § 103 over Khullar in view of Balachandran and U.S. Patent No. 6,853,852 (Park).

Applicant acknowledges the indication that claim 19 would be allowable if rewritten in independent form.

### INDEPENDENT CLAIMS 2, 5, 20, 22

Independent claim 5 was rejected as being obvious over Khullar in view of Balachandran and Sevanto. The Office Action conceded the Khullar in combination with Balachandran fails to disclose that “receiving the indicator comprises receiving a Temporary Logical Link Identity structure having one of plural values.” 6/2/2006 Office Action at 6. Instead, the Office Action relied upon Sevanto as disclosing the receiving of the TLLI structure, citing specifically to column 4, line 17, of Sevanto. It is noted that column 4, line 17, of Sevanto does not make any reference to TLLI. Applicant believes that the Office Action intended to refer to column 6 of Sevanto, which mentions a TLLI for identifying a user. Sevanto, 6:37-38. In fact, the term “TLLI” appears only once in the entire Sevanto reference. There existed absolutely no suggestion whatsoever that the TLLI mentioned in Sevanto could be applied for the purpose of serving as an indicator used to select one of plural types of protocol stacks to use for communications over an air link between a wireless network controller and a mobile station. A person of ordinary skill in the art reading the teachings of Sevanto would have understood that TLLI can be used for the purpose of *identifying a user*. However, none of the cited references, Khullar, Balachandran, or Sevanto, provides any suggestion whatsoever of using the TLLI for selecting between different types of protocol stacks.

Khullar describes that a multi-mode mobile station is able to select between different access technologies based on radiated power levels. The passages of Balachandran cited by the

Office Action (column 5, lines 12-37, and lines 53-65) refer to the use of statistical multiplexing to multiplex different traffic and data on the same channels. Note that statistical multiplexing refers to using the same channel (or channels) to multiplex data or traffic for different users – statistical multiplexing is *not* selection of protocol stacks. In any event, there exists absolutely no suggestion in Balachandran of using TLLI to perform selection of different types of protocol stacks.

In view of the foregoing, it is clear that the Office Action has not cited to any objective evidence that a person of ordinary skill in the art would have been motivated to combine the teachings of Khullar, Balachandran, and Sevanto to achieve the claimed subject matter. In fact, the obviousness rejection provided in the Office Action is a classic example of using impermissible hindsight to piece together un-related elements of prior art references in an attempt to deprecate the claimed invention. This is improper. *See In re Fine*, 837 F.2d 1071, 1075, 5 U.S.Q.P.2d 1596 (Fed. Cir. 1988) (“One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.”).

In view of the foregoing, a *prima facie* case of obviousness has not been established with respect to claim 5, since no motivation or suggestion existed to combine Khullar, Balachandran, and Sevanto. *See* M.P.E.P. § 2143 (8<sup>th</sup> ed., Rev. 3), at 2100-135. In fact, as discussed above, it is clear that the hypothetical combination of the three references would not teach or suggest each and every element of claim 5. Specifically, the hypothetical combination of these references would fail to teach or suggest receiving a TLLI structure having one of plural values and selecting one of plural types of protocol stacks based on the TLLI structure having the one of the plural values.

Independent claim 2 has been amended to recite receiving, in a wireless network controller, a TLLI structure in a message sent over an air link by a mobile station to establish a data transfer session in the wireless network, where selecting one of plural types of protocol stacks in the wireless network controller is based on a value of the TLLI structure. The amendment of claim 2 has rendered moot the rejection over Khullar and Balachandran, since the Office Action conceded that Khullar and Balachandran do not disclose a TLLI structure. However, as explained above in connection with claim 5, no motivation or suggestion existed to

combine Khullar, Balachandran, and Sevanto to achieve the subject matter of claim 2, and the hypothetical combination of these references would not teach or suggest all elements of claim 2.

Amended independent claims 20 and 22 are similarly allowable over the cited references.

#### INDEPENDENT CLAIM 1

Independent claim 1 has been amended to recite subject matter of former dependent claim 13, now cancelled. Claim 1 now recites receiving, in a wireless network controller, an indicator that comprises one of plural training sequences in a message sent over an air link by a mobile station to establish a data transfer session in the wireless network, and selecting one of plural types of protocol stacks in the wireless network controller to use for communications over the air link between the wireless network controller and mobile station based on which of the plural training sequences is in the message.

The Office Action conceded that Khullar and Balachandran fail to disclose receiving one of plural training sequences. 6/2/2006 Office Action at 8. However, the Office Action relied upon Sebire as disclosing the use of training sequences. *Id.*

It is respectfully submitted that the Office Action has not cited to any objective evidence that would have suggested combining the teachings of Sebire with Khullar and Balachandran to achieve the claimed subject matter. Although Sebire refers to the use of training sequences, Sebire does not provide any suggestion that the training sequences can be used for the purpose of selecting one of plural types of protocol stacks in a wireless network controller. There existed no suggestion of any desirability to use such training sequences in the systems of Khullar and Balachandran. Therefore, it is respectfully submitted that a *prima facie* case of obviousness has not been established with respect to the subject matter of claim 1 for at least the reason that no motivation or suggestion existed to combine the teachings of the references. Moreover, it is submitted that the hypothetical combination of the references also fails to teach or suggest selecting one of plural types of protocol stacks *based on which of the plural training sequences is in the message*.

### INDEPENDENT CLAIM 9

Independent claim 9 was rejected as being obvious over Khullar and Balachandran. Claim 9 recites a method that includes receiving, in a wireless network controller, an indicator in a message sent by a mobile station to establish a data transfer session in the wireless network, and selecting one of plural types of protocol stacks to use for communications over an air link between the wireless network controller and the mobile station based on the indicator. Claim 9 defines this indicator as being a parameter used for *contention resolution* by the wireless network controller for distinguishing between multiple mobile stations that are contending for a common resource.

The Office Action cited column 3, lines 11-25, of Khullar as teaching the latter feature of claim 9. 6/2/2006 Office Action at 4. More specifically, the Office Action stated that in Khullar, a determination of minimum radiated power level between different access technologies is a “contention resolution.” *Id.*

Determining a minimum radiated power level between different access technologies is *not* contention resolution for distinguishing between multiple mobile stations. Even more fundamentally, the determination of the “minimum radiated power level (RPL) is performed by the mobile station.” *See* Khullar, 4:30-32; Claim 1 (“determining a minimum radiated power level necessary to exchange the information with the at least one *base station* . . . .”) (emphasis added).

Balachandran provides no suggestion of any desirability to use a parameter for contention resolution by a wireless network controller for distinguishing between multiple mobile stations that are contending for a common resource, where the parameter is used for the purpose of selecting one of plural types of protocol networks.

In view of the foregoing, it is respectfully submitted that the hypothetical combination of Khullar and Balachandran clearly does not teach or suggest all elements of claim 9. Moreover, it is equally clear that there existed no motivation or suggestion to combine the teachings of Khullar and Balachandran to achieve the claimed subject matter. Therefore, a *prima facie* case of obviousness has not been established with respect to claim 9.

INDEPENDENT CLAIMS 14, 24

Independent claim 14 was also rejected as being obvious over Khullar and Balachandran. Claim 14 recites a controller to perform contention resolution with a first type of mobile station using a first type of indicator, the controller adapted to communicate signaling according to a first wireless protocol with the first type of mobile station; and the controller adapted to perform contention resolution with a second type of mobile station using a second type of indicator, the controller adapted to communicate signaling according to a second wireless protocol with a second type of mobile station. The performance of contention resolution with different types of mobile stations using different types of indicators is clearly not taught or suggested by Khullar, contrary to the assertion by the Office Action. The determination of the minimum radiated power level between different access technologies taught by Khullar cannot be considered contention resolution as recited in claim 14. Moreover, there simply is no teaching or suggestion in Khullar and/or Balachandran of using a first type of indicator to perform contention resolution with a first type of mobile station, and using a second type of indicator to perform contention resolution with a second type of mobile station.

With respect to claim 14, the Office Action simply stated that “rejections as stated in claim 1 above apply,” and that “Khullar discloses on column 3, lines 11-25, a determination of minimum radiated power level between different access technologies is a ‘contention resolution’.” 6/2/2006 Office Action at 4. However, the Office Action provided no explanation of how Balachandran applied to the subject matter of claim 14. Claim 14 does not recite the selection of different types of protocol stacks, as recited in some of the other claims. Claim 14 is focused on a system that has a controller to perform contention resolution with a first type of mobile station using a first type of indicator, and to perform contention resolution with a second type of mobile station using a second type of indicator. Balachandran does not provide any suggestion of this feature of claim 14. As explained above, Khullar also does not teach or suggest this subject matter. Therefore, a *prima facie* case of obviousness has not been established with respect to claim 14 since the hypothetical combination of Khullar and Balachandran does not teach or suggest all elements of claim 14. Moreover, as explained above, there existed no motivation or suggestion to combine the teachings of Khullar and Balachandran.

Independent claim 24 is allowable for similar reasons as claim 14.

CONCLUSION

Dependent claims are allowable for at least the same reasons as corresponding independent claims. Moreover, in view of the allowability of base claims, it is respectfully submitted that the obviousness rejections of dependent claims have also been overcome.

In view of the foregoing, allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 20-1504 (NRT.0102US).

Respectfully submitted,

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